

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING THURSDAY, JULY 14, 1994

Acting Chairman Graham called the meeting to order at 1:45 p.m. at the Silverdale on the Bay Hotel, Silverdale, Washington.

MEMBERS PRESENT: ROBERT M. TULL; PATRICK GRAHAM; ARDITH DIVINE and EDWARD HEAVEY; and Ex Officio Members SEN. MARGARITA PRENTICE and REP. KAREN SCHMIDT.

OTHERS PRESENT: FRANK L. MILLER, Director; NEAL NUNAMAKER, Deputy Director; SHARON TOLTON, Assistant Director, Special Operations; BEN BISHOP, Assistant Director, Licensing; PATTI COURMERILH, Financial Investigations; JONATHAN McCOY, Assistant Attorney General; CARRIE SUTHERLAND, Program Manager, Compliance and Hearings; and SUSAN GREEN, Executive Secretary.

Acting Chairman Graham said he is conducting the meeting for Chairman Tull, who is arriving on the 1:00 p.m. ferry.

STAFF REPORTS

AGENCY BUDGET

Director Miller said he will be presenting the budget proposal for the 1995-97 biennium tomorrow. Final action on the budget will be taken at the August meeting in Chelan.

TRIBAL GAMING

Director Miller said negotiations with two tribes in the Kitsap County area are ongoing; Suquamish Tribe and the Port Gamble Tribe. Local caucuses will take place in the community in the near future.

Director Miller said the Ninth Circuit Court of Appeals recently handed down a reversal of the district court order in Spokane. The district court order had dismissed the Spokane lawsuit against the state for bad faith on the grounds that it was unconstitutional, but this is reversed under the Ninth Circuit decision. He will give a briefing to the commissioners during executive session on this issue. The action allows the state to be sued again, which will probably occur. As to slot machines, tribes would probably have to file suit before opening operations with slot machines. He said tribal leaders are meeting in Spokane right now and will be presenting an offer to the state soon. Negotiations will commence with the Puyallup Tribe and the Skokomish Tribe within the next month.

Mr. Miller said that U.S. Senator Inouye has proposed amendments to the Indian Gaming Regulatory Act that would remove the states from the process of working with tribes on background checks and licensing. He said

the bill seems to have been designed for states that have no programs, as opposed to the state of Washington, which tries hard to work hand-in-hand with tribal governments. The legislation has raised concerns for both states and tribes. There are copies of this bill available by contacting Susan Green at the Commission.

Director Miller introduced Phil Dorn of the Port Gamble S'Klallam Tribal Community. The Tribe is close to finalizing a class III gaming compact. The Swinomish Tribe held a grand opening ceremony on Monday, and Director Miller and Chairman Tull attended. He said the Tribe has worked incredibly hard to put this operation together on its own; there is no management company involved. The actual opening is July 15th.

Sen. Prentice said she read in Wednesday's newspaper that Sen. Inouye's bill was rejected by most tribes; **Director Miller** said he's heard from some tribal leaders that the bill was dead on arrival. He said the Senator tried to please a lot of different parties and there are a lot of different positions. The Commission is concerned about the bill's provision to take the state out of the process. The intent of IGRA was to develop a relationship in the area of class III gaming, and it says that if states choose not to play a role, then they should be out of the process. He said states with good tribal-state relationships should be allowed to remain involved and to work with tribes.

Acting Chairman Graham asked if Sen. Inouye's bill included a cut-off date for tribes not already engaged in class III gaming. **Director Miller** said no, there is nothing he's aware of on that issue. One point in the bill is that the tribes would request negotiations from the Secretary of the Interior instead of the state. The Secretary would notify states, and states would then have the opportunity to negotiate. If a state chose not to negotiate, then the Secretary would negotiate with the tribe. Many states have already chosen not to negotiate. **Acting Chairman Graham** asked if there are any tribal compacts close to agreement that will require special meetings of the Gambling Commission in the next few months; **Director Miller** said yes, possibly two that would require hearings in the Silverdale/Poulsbo area.

Rep. Schmidt said she was at Lake Chelan and that the Colville Indian Tribe is building a second facility near the existing casino. She has heard they have some form of slot machine that we have not seen in the past. **Director Miller** said he has asked staff for a report on that issue and that he has been advised that they have brought in slot machines. He said this happened as a result of the stay by the Ninth Circuit Court of Appeals. **Rep. Schmidt** said she thought these weren't exactly slot machines, that the description she heard was the machines will play either black jack or slots, and instead of money, a ticket is dispensed. **Director Miller** said he doesn't know exactly what kind of machines they have, but a meeting is being set up with that tribe and the issue will be discussed. **Rep. Schmidt** asked how the relationship with the Colvilles and the state stands; **Director Miller** said that, at this point, there's no formal relationship regarding gambling. The Commission extended an invitation to commence negotiations again to reach a compromise and resolve the issue, and this invitation has gone out to the Spokane Tribe as well. The Colvilles have not formally responded, but he said they have shown an interest. It is the agency's view that slot machines are in violation of IGRA and state law. Given the Ninth Circuit's stay, it's hard to predict what will happen and if the U.S. Attorney will seek to enjoin the Colvilles.

LICENSE APPROVALS

NEW LICENSES, CHANGES, WITHDRAWALS, and TRIBAL CERTIFICATIONS

Mr. Bishop said there is one manufacturing license approval under a separate cover, Mikohn Gaming Corporation, to be taken separately. Commissioners have copies of the report prepared by staff. **Commissioner Divine** moved that the licenses, changes, withdrawals and tribal certifications be acted on in accordance with the recommendation of Commission staff; **Commissioner Graham** seconded the motion,

motion carried.

MIKOHN GAMING CORPORATION, INC.
Las Vegas, Nevada

Ms. Fischer said they are seeking a manufacturers license for the purpose of selling keno equipment to class III operations in the state of Washington. Mikohn was formed in May 1986 to develop, manufacture and distribute technologically advanced, progressive jackpot systems for use with gaming machines. They also sell electrical signs to promote and display progressive jackpot games within casinos. The four majority owners each own 16.9 percent of the company's stock.

Before they became a public company in November 1993, they held licenses in nine states and have surrendered and reapplied for those licenses per regulatory requirements in those states related to the public offering. During the week of June 6, 1994, staff from the Financial Investigations Unit conducted an on-site investigation of the company's financial records and other documents. Criminal background checks were performed on Mikohn Gaming Corporation's owners, officers and their spouses. A financial background investigation was performed and records were analyzed to determine ownership and verify sources of funds. Nothing was found to prohibit this company from receiving a license. Staff recommends limited licensing of Mikohn Gaming Corporation, Inc. as a manufacturer of keno equipment. **Acting Chairman Graham** asked who performed the investigation; **Ms. Fischer** said two special agents; Jeannette Brychell and Elmer Holland.

Commissioner Heavey moved for approval; **Commissioner Divine** seconded the motion; **Mr. Bishop** clarified that this is for manual selection; **Commissioner Heavey** amended his motion to include manual selection; motion carried with three aye votes.

REVIEW OF FRIDAY'S AGENDA

Sharon Tolton said staff reports will be given tomorrow by the director. There are two bingo rules on tomorrow's agenda for final action, items 3(A) and 3(B), the electronic bingo dauber rule, and a rule allowing bingo cards to be sold in advance of certain events. The commissioners have the correct copy of the rule on electronic bingo daubers, but the agendas mailed out excluded two additional lines. The corrected version is available on the back table.

Ms. Tolton said Item 4 is an emergency rule up for discussion only and final action in August. This rule relates to card room fees and is currently in effect because of the emergency filing. Item 5 is a petition presented by the Washington Federation of Clubs for discussion only and final action in August. They request that the Commission clarify a rule that currently requires that the center position be announced at bingo games. **Ms. Tolton** said item 6 is presented by staff for discussion and possible filing. This deals with the permanent deletion of prizes given on punchboards and pull tabs using indelible ink to mark the flares, and not with washable markers, stickers or labels. There have been problems with using stickers and other non-permanent means of marking off flares. Item 7 is a petition presented by Music Vend Distribution Company for discussion and possible filing tomorrow. This petition relates to commercial amusement games and requests an increase from a \$100 cap on those prizes to a \$200 cap. **Director Miller** asked if this pertains to redemption game prizes; **Ms. Tolton** said yes.

DEFAULT HEARINGS

Acting Chairman Graham two of these establishments were sold and one closed down and is out of business, so they can be voted on as a group.

Pars Corporation d/b/a Luck Star Pub, Kent

CR 93-1138; Summary suspension of license to operate punchboards and pull tabs.

**Gordon E. and Janice E. Lyons d/b/a Silver Creek Saloon, Moxee, Washington. CR 94-0597.
Summary suspension of license to operate punchboards and pull tabs.**

**Gator's Inc. d/b/a Gator's Pub, Spokane, Washington. CR 94-9247.
Revocation of license to operate punchboards and pull tabs.**

Commissioner Divine moved that the licenses be revoked; **Commissioner Heavey** seconded the motion; motion carried.

QUALIFICATION REVIEWS

CHILDREN'S INDUSTRIAL HOME, Tacoma

Ms. Coumerilh said this is a charitable organization with a Class "I" bingo license and are licensed for punchboards and pull tabs. They've been licensed since January 1982. They were first formed in 1892 and they have 23 voting members. The organization maintains a full time administrative office and four treatment facilities in Tacoma. Program staff are on call 24 hours a day and provide a stable and supportive environment for young people through seven treatment programs. During the last year, the organization served 150 members of the general public. Net gambling revenues totaled \$221,185, which was 5.6 percent of total revenues. Bingo net income was \$133,038, which was 3.4 percent of total revenues. They spent \$3,683,394 in support of their stated purposes. Staff recommends qualification as a charitable organization. ((Chairman Tull arrived at this time))

F.O.E. #24, Aberdeen

Ms. Coumerilh said this is a fraternal organization with a Class "G" punchboard/pull tab license and also have licenses in bingo and raffles. The organization was first formed in June 1899 and has been licensed since 1974. They have 1,751 voting members. The organization maintains a multi-purpose lodge for its members in the City of Aberdeen. The lodge is open seven days a week and members meet twice monthly to conduct business. Other charitable and civic services are provided indirectly through volunteer projects and cash contributions. During the last year, the organization served 550 members and approximately 2,700 of the general public. Contributions totaled \$4,194, and the organization gave away \$1,000 in scholarships. Net gambling revenues totalled \$56,714. They spent \$134,347 in support of their stated purpose. Last year the organization provided holiday parties for children in the community, and also donated the proceeds of eight steak and lobster dinners to the Children's Shrine Hospital. Staff recommends qualification as a fraternal organization.

KITSAP PENINSULA HOUSING ASSOCIATION, Bremerton

Ms. Coumerilh said this is a charitable organization with a Class "F" bingo license, and a license for punchboards and pull tabs. The organization was first formed in November 1975; there are 15 voting members. KPHA provides various services to handicapped, elderly and other disadvantaged citizens of Kitsap County. They operate six housing projects and provide other programs to developmentally disabled individuals. They served approximately 56 clients during the last fiscal year. Net gambling revenues totalled \$7,676. Bingo net loss was \$16,283. The organization spent \$2,548,339 in support of their stated purposes. In November 1993, KPHA purchased their own building, which enabled them to centralize their administrative offices and bingo game. The facility will also be used by people with developmental disabilities for social

events and meetings. Staff recommends qualification as a charitable organization. **Commissioner Graham** asked about the bingo net loss. **Ms. Courmerilh** said staff met with them on June 17, 1994, to discuss this issue. The executive director said he's confident they will show a profit next year; they're working on it and are concerned. **Ms. Fischer** said that when the organization moved to the new building, the gross income on bingo declined and they did not anticipate the increase in expenses. This was their reason for the loss in bingo. **Mr. Bishop** said their prize payout went up slightly during that period.

PUGET SOUND MUSIC SOCIETY, Tacoma

Ms. Courmerilh said this is an educational organization with a Class "H" bingo license, and a license in punchboards and pull tabs. They were formed in July 1986 and now have 15 voting members. Programs include the Concert Band, the Swing Band and the Music Scholarship program. They served 90 band members and students, and approximately 7,000 of the general public. Contributions totaled \$2,705, and scholarships totaled \$10,318. Net gambling revenues totalled \$288,810; and bingo net income was \$171,993. They spent \$159,573 in support of their stated purposes. The organization has continued to expand the music scholarship program, as well as the concerts performed in the community. Staff recommends qualification as an educational organization.

Commissioner Graham asked about the six related party transactions. He said he can understand these since they are a musical group; **Ms. Courmerilh** said staff has discussed with the organization the requirements for related party transactions and independent management structure requirements.

SEATTLE CASCADES BOOSTER CLUB, Seattle

Ms. Courmerilh said they are an educational organization with a Class "J" bingo license, and licenses in punchboards/pull tabs and amusement games. They were first organized in July 1974, and now have 60 voting members. Their primary activity is to provide funding to cover travel, staffing, uniforms and instrument expenses for the Cascade Drum and Bugle Corps. The executive director and program staff coordinates year-round training for three flag teams and a musical corps. Participants are youths between the ages of 9 and 21; flag teams compete in locations throughout the Northwest and in Canada. The marching band participates in parades and field competitions held across the nation. The organization served 144 participants last year; net gambling revenues totalled \$284,695, and bingo net income was \$207,783. The organization spent a total of \$245,629 in support of its stated purposes. The summer Drum and Bugle Corps band participated in a 24-day Mid-West concert tour that culminated with one week of national music games in Jackson, Mississippi, which was sponsored by the Drum Corps International. The organization is also working to purchase their own bingo hall. Staff recommends qualification as an educational organization.

Commissioner Divine moved for qualification of the above five organizations; **Commissioner Heavey** seconded the motion; motion carried.

Acting Chairman Graham called for an executive session to discuss pending litigation and tribal negotiations. He adjourned until Friday at 10:00 a.m.

WASHINGTON STATE GAMBLING COMMISSION

MINUTES COMMISSION MEETING FRIDAY, JULY 15, 1994

Chairman Tull called the meeting to order at 10:08 a.m. at the Silverdale on the Bay Hotel, Silverdale, Washington.

MEMBERS PRESENT: ROBERT M. TULL, CHAIRMAN; PATRICK GRAHAM, ARDITH DIVINE and EDWARD HEAVEY; and Ex Officio members SEN. MARGARITA PRENTICE and REP. JUDI ROLAND.

OTHERS PRESENT: FRANK MILLER, Director; NEAL NUNAMAKER, Deputy Director; SHARON TOLTON, Assistant Director, Special Operations; BEN BISHOP, Assistant Director, Licensing; JONATHAN McCOY, Assistant Attorney General; and SUSAN GREEN, Executive Secretary.

Chairman Tull said there will be a presentation by the executive director of the Washington State Council on Problem Gambling, Mr. Gary Hanson.

APPROVAL OF THE MINUTES FROM THE JUNE 9-10, 1994, MEETING

Commissioner Graham moved for acceptance of the minutes from the June 9-10, 1994, Commission meeting in Walla Walla, as set forth and printed in the agenda packet; **Commissioner Divine** seconded the motion; motion carried.

STAFF REPORTS

TRIBAL GAMING

Director Miller said there is an article in the Seattle P-I this morning saying that the tribes have offered the state a share of profits in exchange for the exclusive use of slot machines. He said that he and Chairman Tull are meeting next week with the Governor and Attorney General regarding tribal gaming. In the past, it has been the Gambling Commission's and the Governor's position that slot machines are illegal and there is no authority to negotiate slot machines without legislative action.

Sen. Prentice asked if the tribes are asking that they be the only ones allowed to use slot machines in the entire state. **Director Miller** said he has not seen a formal proposal on this, but the offer appears to be modeled after the Connecticut situation, which is exclusive use of slot machines in exchange for payment to the state. In Connecticut, the tribes have a monopoly on machines and one tribe pays the state approximately \$110 million. A second tribe has negotiated with the state, and the total is now up to around \$180 million for two tribes.

Director Miller said the Swinomish Tribe opens its new facility today, which is on the way to Anacortes and La Conner. He and the Chairman were present for their formal blessing ceremony on Monday. Staff is working very closely with the Tribe and has been doing a lot of certifications and backgrounds. He said it is a very nice facility.

AGENCY BUDGET

Director Miller said the Essential Requirements Level is at \$16,113,000 right now, including all the adjustments from the last year. He said the agency has grown considerably in the area of tribal gaming and other areas since the last budget. The request for new employees is limited to two; one for each of the two years, and this is for the area of compliance and hearings. There is currently an executive fellowship position in that section from the Governor's staff, and this person has just found a job at another agency. He would like to refill that position.

Director Miller said that one area of development is with regard to computer systems. It is necessary to get better location ability in the field offices and other divisions. Money has been saved through the past removal of vehicles, and the present request is only for five new vehicles. Training and development for staff has been increased to \$151,000 for the two-year period. Problem gambling contributions to the State Council on Problem Gambling are increased from \$80,000 to \$100,000 per year. He said the difficulty is trying to predict where the agency will be next year or the year after, given the challenges faced by the agency. OFM just recently sent the instructions for this budget, and there's not much discretion allowed as far as what's currently there.

Director Miller said that in order to fund this budget, license fees would increase by 6.46 percent, beginning January 1, 1995. Initiative 601 affects the agency's ability to adjust fees to raise revenues, and 6.5 is the largest increase allowed under that initiative. A plan to increase pull tab stamps from 25 cents to 50 cents fell through, because the needed increase is not allowed under initiative 601. Next year, the allowable increase will be even lower, and the agency would have to go to the Legislature for an exemption if the Commission deems it necessary.

Chairman Tull recognized a former director of the Commission, Ron Bailey, who is in attendance. He said that there was rarely ever a Commission review of the budget before Mr. Bailey became director. Mr. Bailey began making the process open to the commissioners and to the audience, and over the past few years that process has been formalized even further. He offered public thanks to Mr. Bailey on behalf of the Commission for his many years of excellent service.

ADOPT OR AMEND RULES

BINGO

(A) New Section WAC 230-20-244

Electronic Bingo Card Daubers -- Definition -- Operating Restrictions -- Standards.

Ms. Tolton said this is one of two rules up for final action today. Testimony and correspondence has been received both for and against this rule and/or portions of this rule, and the commissioners have copies of these comments. She said there is a slight change from the published agenda and the correction sheet is available.

The underlined section that should be added is on the first page of the rule and states, "rental fees or minimum card purchase requirements shall not apply to players with disabilities who are utilizing electronic dauber units."

Mr. Bishop said a summary of the latest survey results have been passed around at the bingo study committee and to the Commissioners. The statistics say 12 percent of the players were playing almost 33 percent of the cards, which is expected because the machines have the ability to play more cards. What was

unexpected was that the machine players only won 20 percent of the prizes. Last month, the results indicated machine players won 18.8 percent of the prizes, so it's been consistently below the percentage of cards played. The dollar value of the prizes follow along at 18.9 percent. The results of the player survey indicate that a majority of the players want machines, but they also want limits, with the limit on the number of cards getting the highest percentage of yes answers.

Mr. Bishop said that these devices have been operating at bingo halls in the state of Washington for more than five years. They are seen as a player assistance device, and until recently, not controlled by the Commission. Last November, rules were passed to include bingo equipment as controlled items. It's up to the bingo halls as to how many machines they have in their halls. The rules were modified to say that, as long as the player has cards in their possession that had all the numbers and faces that were loaded into the machine, then it was fine to use the device for assistance in marking such cards.

Mr. Bishop said that, with regard to the ADA, there was language added, at the suggestion of Commissioner Heavey, that allows people with disabilities to reserve machines ahead of time. Any fees or minimum card purchase requirements do not apply to disabled people using the devices. The licensees have the ultimate responsibility to comply with the ADA; compliance with the Commission's rule does not relieve the halls from this responsibility. **Mr. McCoy** said there is a requirement for bingo halls, as places of public accommodation, to comply with the ADA, but the function of the Commission in performing its regulatory responsibilities does not include enforcing the ADA. He suggested adding a section later, possibly in the general section of rules, that states that compliance with these rules does not relieve any of the licensees from responsibility for compliance with the ADA. There are other rules that might need the same disclaimer, and it may be more appropriate to put something in the general section than just in the electronic bingo dauber rule. **Chairman Tull** said it would be appropriate when the new rule manuals are published to include a statement from the director reminding everyone that compliance with the Commission's rules does not constitute compliance with the ADA or local requirements. A rule is not needed to state what is legally true. **Mr. McCoy** said his general concern is making it known publicly.

Director Miller asked if any more complaints have been received since this rule has been on the agenda; **Mr. Bishop** said one more letter was received this month from four or five players regarding their concerns. This letter was forwarded to the Commissioners. He said this has been a controversial issue and there has been more input from the public or players on this issue than on any issue before the Commission that he can remember.

Sen. Prentice asked about the character of the complaints, and asked if they center around the perception that players with machines have an unfair advantage; **Mr. Bishop** said yes, that they are unfair and are not traditional. **Sen. Prentice** referred to Mr. Gorlie's letter and said it bears out, pretty much, what the statistics are showing; and that he said it would even out eventually and that there is a very vocal minority. **Director Miller** said there are a small number of people objecting to the machines, and that the machines have been out there for quite a few years. This rule brings them under regulation and sets standards to ensure the nature of bingo is not changed.

Commissioner Heavey said one of the things that makes these machines appear unfair is that 12 percent of the players are winning 20 percent of the prizes; however, they're playing 33 percent of the cards. It's impossible for the other players to know how many cards the winners are playing on the machine. He said it's like betting on every horse in the race. **Mr. Bishop** said, should this rule not be passed, it would go back to no restrictions and players could play up to 256 cards on the machines, depending on the hall's policy.

John Beadle, of Seattle Junior Hockey and representing the WCCGA, had comments regarding the ADA. He said they discussed this at WCCGA's meeting last night, and the concern is that if people with disabilities can reserve all the machines without a minimum buy-in, then the halls will lose money. They will not be able to recover their leasing costs if people with disabilities related to marking cards can reserve all of the machines. He said there should be a restriction on the amount of machines available to people with disabilities. If they can't recover the cost of leasing these machines, then they won't have them in their halls. He said that when people with disabilities use the handicapped parking to go have a meal in a restaurant, the establishment

doesn't give them a break on their meal and they pay the same price as anyone else.

Commissioner Heavey said the ramps, elevators, and other accessible features must be built without reimbursement. He said if the hall doesn't have enough machines to accommodate the handicapped and other patrons too, then they should get more machines. **Mr. Beadle** said the removal of the minimum buy-in is the problem for them and he'd like that part removed from the rule. He said maybe whatever group is responsible for making sure halls are complying with the ADA will come to the licensees. **Chairman Tull** said that if these machines are necessary accommodations for people who have particular handicaps, can halls charge those people, under the ADA, a higher minimum buy than people playing with paper? **Commissioner Heavey** said the Commission has an affirmative duty to carry out the law, and make sure the rules passed are in compliance with the law. If a rule is passed that permits licensees to discriminate against the handicapped by charging minimum fees that someone playing on paper does not have to pay, then that's discrimination and it's against the law. When ramps must be built for access to buildings, people using the ramps cannot be charged a fee to come in the door. As it is now, people who can't play using paper cards are being charged a higher minimum buy than those playing with paper cards. **Mr. Beadle** said when they pay the higher fee, they also get more cards. **Commissioner Heavey** said they have no choice; if they're handicapped they must buy more cards.

Mr. McCoy said bingo halls are a place of public accommodation and have obligations under the ADA. He looked at the rule as proposed and found it to be within the ADA. If the Commission passes a rule that is inconsistent with the ADA, the Commission may have liability. Normally the way people find out about their legal obligations is when someone sues. Changing the rule in the way Mr. Beadle requests, where people with disabilities are charged more for playing bingo than others who play at the hall, that's discriminatory. **Director Miller** said the halls may choose to not have the machines. **Chairman Tull** said that maybe, under the ADA, the halls could be required to have machines, although that issue is not up to the Commission. **Director Miller** asked how many people with disabilities presently use the machines; audience members said very few use the machines. **Chairman Tull** said maybe they could get the suppliers to distinguish between the machines that must be available for people with disabilities and charge less for those machines. **Mr. Beadle** said the owner of the company is in the audience and he will discuss the issue with him later. He said they don't have a problem now, but without the minimum buy on machines, there could be a problem in the future. **Commissioner Heavey** said the purpose of the ADA is to make activities available to people who otherwise wouldn't have it available to them. The federal law shifts the cost to the bingo hall.

Mr. Kaufman, of Big Brothers and Sisters of Spokane, said he agrees with Mr. Beadle. He also said the question is whether the people need to participate or that the operators need to provide access to the facilities. Most of the halls have handicap-equipped facilities. He said if someone goes into a restaurant and cannot move their hands, does the restaurant provide someone to feed them? In a theater, does a blind person get in free because they can't see it anyway? He said he agrees with the previous rule requiring halls to hold a machine until the last 15 minutes in case someone with a handicap who needs a machine comes in. He said all the federal rules use the word "reasonableness" in terms of access and cost. It said it's unreasonable to require operators to have every machine they pay rent on available to the handicapped people first. He said these are charitable and non profit operations, and some are in the business of working with handicapped people and some are not. He said his organization needs to make money to serve the kids in their community. Their track record is a maximum of three handicapped people who use machines, and they have 80 machines. He said when people find out they can get machines without paying a minimum and can reserve the machines, more machines may be used. He said the rule does not state how far in advance they can reserve machines and he feels they should only hold the ADA machines up until 15 minutes before the session starts.

Commissioner Heavey said he doesn't have a problem with language that says, "players with disabilities that will restrict their ability to mark cards have priority to machines if they are there within 15 minutes of the game," or something like that. He said he does have an objection to the minimum charge for a disabled person using a machine because they are being charged a fee not otherwise charged to a person without a disability. He said he doesn't have a problem with holding the machines up until 15 minutes before the session begins, but

he doesn't think the halls can charge more money to disabled people to play bingo. **Mr. Kaufman** said the key question is whether halls will have to have machines to accommodate handicaps, or if they can choose to not have machines in their halls. He asked if everyone who does not presently have machines will have to bring some on board for accommodating handicapped people. He said if 20 percent of his crowd becomes handicapped because they have machines, and if they don't make any money on them, will they be allowed to get rid of some machines. He said he will lose money if people buy the cards at the regular price without a minimum buy when they use machines.

Sen. Prentice asked what would prohibit a minimum buy for everyone. **Chairman Tull** said there are two minimums; one to play on the machines, which is higher. **Ric Newgard**, Seattle Junior Hockey, said they have 37 machines, and if 37 people come in to use the machines, they all pay the same minimum charge. **Mr. Nunamaker** asked if that's the same minimum as a person who's not playing the machine. **Mr. Newgard** said there's a paper minimum, but everyone who plays the machine pays the same minimum. **Commissioner Heavey** said if he can't play paper, his minimum buy should not be higher because of his disability. **Mr. Newgard** said there are customers out there who only want to spend \$20, and they might go to their doctor and get a letter that says they need to use a machine because they can't see quite as well. He's confused about why somebody should pay less than anybody else because they're disabled. He said they want to supply these machines to the disabled, but he doesn't want to give the remaining customer base a potential for abuse.

Chairman Tull asked if, in a ball park or theater that has different seating prices and only certain areas are accessible, do people with disabilities have to buy the expensive ticket if the seats are in an expensive section, or do they buy a ticket for a bleacher seat but get to sit in the better section because that's the only accessible location. He said more investigating must be done into this issue. He asked if the halls could step out of the picture and have someone rent machines at the front door. **Mr. Kaufman** said the rule says no minimum and no rental fee. **Commissioner Heavey** said the Kingdome recently took out eight seats to put in two disabled seats, added an elevator and electricity, all at the cost of the Kingdome; and the seats cost the same to those people as Commissioner Heavey must pay for his seats in the same section. **Mr. Kaufman** said that is only physical access and his hall is accessible. He said the Kingdome wouldn't have an interpreter there for them if they're blind. **Commissioner Heavey** said if halls want to provide machines, then they have to make them available to everybody regardless of their handicap. If they don't want to do that, then they shouldn't have machines at all. He said if people don't like the ADA law, they should go to their Congressmen and Senators and have them change the law. **Mr. Kaufman** said it must be reasonable in order for them to recoup their costs; **Commissioner Heavey** said if they want to raise the price to everybody in order to recoup costs that's fine, but they cannot recoup it from the people they are providing service to.

Randy Baierl, Northern Lights Bingo, said he wrote a letter that is in the packet but also wrote a letter more recently. In 22 years of working in the bingo industry in various states, never once has he seen a blind person come in a play bingo. They have had braille cards, but no one had come in until last week when a blind person came in and was able to play a machine. He said he was proud to have the opportunity. He said in writing this new rule, the Commission is assuming handicapped people don't have any money. They do reserve machines until 15 minutes prior for the handicapped who can't play paper, and they provide braille hard cards and people can play just one, if they want, for a dollar. They have larger cards for people who can't see as well or who can't daub very accurately. The problem is with a restriction on 100 percent of the machines. If the Kingdome held all the seats for disabled, then people without disabilities would be discriminated against. He said they charge the same price whether handicapped or not; paper is one price and machines are another price. They have areas of accommodation for people with disabilities, but they pay the same.

Director Miller said he's hearing that the industry wants it both ways. The Commission could ban the machines and do away with the entire issue. He said that some of the arguments for allowing machine play were that it would allow people with disabilities to play bingo. It's the cost of doing business to give them a break in prices because that's consistent with the ADA. If they have machines, they will have to eat the rental fee on the few occasions that they are used with a lesser buy-in. **Commissioner Heavey** suggested an

amendment to change the provision to, "provided that players with disabilities that would restrict their ability to mark cards may reserve dauber units on the same basis that other individuals may reserve the units." **Mr. McCoy** said the problem with that is that the rule prohibits players from reserving dauber units. **Commissioner Heavey** said they have a legitimate complaint if someone can call in a advance and tie up all the machines, and that's not necessarily appropriate. However, if somebody with a disability comes in, then that machine has to be made available to them first.

Chairman Tull said if someone who runs a race track rents binoculars, do they have to supply binoculars rent-free to people who have poor vision and need them just to see as others do? **Commissioner Heavey** said not free. **Chairman Tull** said the trouble with taking away the minimum buy is that it makes this particular device free to the disabled person, whereas the fully-abled person must pay. **Mr. McCoy** said someday that may be required if it's necessary for somebody to participate in an activity. He said there's the question of what is a disability, and that has to be determined in accordance with the regulations under the ADA. It may be appropriate to put a note in the rule saying that when we say disability, we mean consistent with the ADA. In determining what is reasonable, the court is going to look at whether or not a \$10 fee, relative to the number of cards sold is reasonable to a particular organization. That could mean that, over time, the larger halls could someday be required to have machines if they are legally available. The Commission could decide to outlaw machines for everybody; if they are allowed, then they must be made available if that is a reasonable accommodation. The question of whether reserving all 32 machines is reasonable, that's a question beyond the scope of the Commission's authority. That can only be decided in a lawsuit.

Director Miller said the bingo hall makes the determination as to whether the person has a disability that would affect their ability to mark cards. If the hall does not believe a claim is valid, then they would have to deal with that person on that issue.

Chairman Tull said the question is if a minimum buy is the same thing as charging a fee, and he does not think it is. **Mr. McCoy** said that is the mechanism operators use to recoup their costs. He said since most operators rent the machines and don't charge the customers extra to reimburse their rental costs, then they are giving the machines for free anyway. The standard is, if a person with a disability can only play bingo with that assistance of a machine, then they must be allowed to play on the machine without cost. **Chairman Tull** said there is no cost, just a minimum buy; **Mr. McCoy** said they cannot be treated differently; **Chairman Tull** said a person with a small appetite doesn't have the right to insist that a restaurant serve only part of the meal.

Commissioner Heavey said if people are charged extra to use the wheelchair access to enter the restaurant, then that's discrimination. If they can come into a bingo hall and play one card for a dollar, then the fact that you use a machine cannot be a basis to increase the fee. If, in order to play bingo, a minimum number of cards must be purchased, then that minimum must be the same for everyone. He said he's willing to word this rule in a way that says this. It's not reasonable to say people with disabilities will be treated better than people playing in the hall, but they are entitled to be treated at the minimum requirement, not the maximum.

Director Miller asked what the minimum buy is; **Ric Newgard** said the minimum buy at their bingo hall on paper cards is \$6 (6 cards), minimum buy on a machine \$30 (42 cards). **Director Miller** asked how many people with disabilities presently play the machines; **Mr. Newgard** said he has one customer with a disability who plays with far beyond the minimum number of cards for machine play. **Mr. McCoy** said if there is a minimum purchase that applies to all players, then it must apply to someone with a handicap as well. **Director Miller** said that, the way the rule was written, it would remove that minimum. So the new language should say that a machine minimum for someone with a disability shall equal the minimum afforded all non-machine players. **Mr. McCoy** said instead of saying "rental fees or minimum card purchase requirements which apply only to machine players would not apply to people with handicaps." **Director Miller** said a compromise could be to say they may not exceed the minimum buy-in required for non-machine players for a person of disability. He asked the audience what the operator's cost is to rent a machine; someone in the audience said \$10.

Commissioner Graham moved to continue this issue and move the rule to the August agenda for final action;

Commissioner Divine seconded the motion; **Mr. Nunamaker** asked what the time limit on this rule is; **Ms. Tolton** said it can be on the agenda for 120 days. **Mr. Newgard** said the president of Bingo Card Minder is here and he said he's willing to work out a different fee structure on the rental of the machine if it is used by someone with a disability.

Chairman Tull suggested that the bingo licensees look into their responsibilities under the ADA and comment at the August Commission meeting. **Commissioner Heavey** asked the staff to work with the bingo people to accomplish two purposes: one, that machines cannot be reserved on a different basis than they are reserved for anybody generally. He said that would, apparently, strike the first sentence. Two, that the minimum buy cannot be different from the minimum buy for people playing on paper. He said he wants research by the Commission's attorney into the matter. A vote was taken on Commissioner Graham's motion; motion carried unanimously.

Mr. McCoy said he has a legal concern about the number of cards that can be played on the machines. The limit of 66 cards seems reasonable, but the question is whether it is fair for a person playing 66 cards on a machine when 66 cards can't be played that easily on paper. The issue is if the person is playing three cards because that's all they can afford, or all they can physically play. He said he wanted to make that issue public because he's going to research this aspect for legality.

Mr. Bishop asked the Commission if staff should continue to collect survey information from the licensees; the Commission concurred that no more surveys need to be collected.

(B) New Section WAC 230-20-103 Bingo Cards to be Sold Upon the Premises--Exceptions

Mr. Bishop said this item is up for approval today. This is the fourth month on the agenda, and it has been discussed in the bingo committee meetings for more than six months. It allows licensees to pre-sell the ability to reserve a position at a game with certain restrictions. Modifications were made after last month's meeting with regard to cancellation and refunds in sub-section eight, which is why final action was postponed until this meeting. **Chairman Tull** called for public comments; no one came forward. **Commissioner Heavey** moved for approval of this rule; **Commissioner Graham** seconded the motion; motion carried.

CARDROOMS

Amendatory Section WAC-40-050 -- Fees for card playing

Ms. Tolton said this is up for discussion only and final action in September. This was adopted as an emergency rule in June, so it is currently in effect. There have been no negative comments regarding this rule. The rule change allows card room operators to charge \$3 per half hour of play, instead of the \$2 limit previously in the rule. **Chairman Tull** called for public comments; no one came forward. He said comments in writing would be accepted up until the September meeting.

BINGO

Amendatory Section WAC 230-20-246 -- Manner of conducting bingo

Ms. Tolton said this is up for discussion and final action in August. The petition is presented by the Washington State Federation of Clubs. The proposal allows for an amendment that would eliminate distraction to the players by allowing only relevant symbols and/or numbers to be called during a game. The group provided a handout to the commissioners that illustrates the patterns of the games.

Lynn Melby, executive director of the Washington State Federation of Clubs, said this practice is going on right now and the change is really a housekeeping measure to conform with existing practice.

William Henry, Kitsap County Bingo, agreed with Mr. Melby and said this rule should be adopted.

PUNCHBOARDS AND PULL TABS

Amendatory Section WAC 230-30-070 -- Control of Prizes

Ms. Tolton said this is proposed by staff for discussion and possible filing today. The amendment clarifies the requirement for punchboard/pull tab operators to permanently delete reference to prizes from the flare upon determination of a winner, which must be done with indelible ink to delete the prizes. It also eliminates the use of labels or stickers. Staff recommend filing for further discussion.

Mr. Nunamaker said there have been cases where the flares were marked off with stickers and then the stickers were removed and placed back on the flares at a later date. There were a rash of cases. The staff is asking that permanent marker be required so the pen cannot be erased from the flare. **Commissioner Heavey** asked if the language should include "or the equivalent" after "indelible marking pen," or if it is sufficient as worded. **Ms. Tolton** said the intention was to require the use of non-erasable type of pen. She said it's not necessarily the operators who are manipulating the flares, but there can be players or people in the area who aren't playing the game who peel them off. **Director Miller** said that state law requires that all prizes be marked off over a certain dollar amount so the public knows what they're playing for. He said the people who were taking the stickers off would replace them when the agents came around. The offenders have had their licenses summarily suspended.

Commissioner Graham moved for filing, **Commissioner Divine** seconded the motion; motion carried.

COMMERCIAL AMUSEMENT GAMES

WAC 230-20-685 -- Wager and Prize Limitations

Ms. Tolton said this is for discussion and possible filing today. The rule change proposal is the result of a petition by Music Vend Distributing Company for higher prize limits for commercial amusement games. The request is for the limit to go from \$100 up to \$200.

Dale Walker, general manager for the operations division of Music Vend, said they would like to be able to find higher quality prizes such as VCRs, small color TVs and quality bicycles. The \$100 limit has the benefit of forcing them to find good deals on prizes, but it limits them to clearance items and close-outs. If two people are accumulating tickets for the same prize, he may not have the ability to go out and find another duplicate prize for under \$100. He said this has not happened yet. The regular price of a CD player that he normally buys on sale for \$98.95 is regularly \$135; and he would not mind use his own money for the \$30-40 difference to provide that piece of equipment to the customer if a second person has played for it and saved up the tickets. He said the rule does not allow him to do that.

Chairman Tull asked for an explanation of the games; **Mr. Walker** said games include skill-oriented amusement games in which tickets are saved for larger prizes. More tickets are earned as the skill level goes up. **Director Miller** said these games are found in shopping mall arcades and are geared toward children. Large numbers of tickets are needed to redeem prizes. Staff do not object to filing but reserve views on the merit of going to this level until there is an opportunity for review.

Sen. Prentice asked how long the limit has been \$100; **Mr. Walker** said about two years. He said they have more than just the \$100 items. There are one-ticket items such as small plastic toys and candy, and items on up to \$100. **Director Miller** said operators make their money by having these products re-purchased through ticket sales. **Mr. Walker** said they price their products at a penny per ticket, so \$100 item would be 10,000 tickets. Minimum play is a quarter. **Mr. Nunamaker** asked how many tickets are never redeemed; **Mr. Walker** said about 20 percent of tickets are never redeemed. He said a lot of these machines were operated

without tickets before the rule. **Director Miller** said these are amusement games that need a material level of skill. If they were pure chance, they'd be a gambling device. **Mr. Walker** said most of these games have something to do with a ball; football, baseball or small ball to roll down or up a ramp to hit targets. The smaller the target, the higher the point value and the more tickets that are won.

Sen. Prentice asked why all the administrative costs for these rule changes are \$500; **Director Miller** said that is one item staff are looking at. He said there is a need to update that figure. He said this includes the cost to implement the rule making and put the process into place. **Ms. Tolton** said it's being looked at now because the question came up a couple of months ago. **Chairman Tull** suggested saying "estimated agency cost" instead. **Ms. Tolton** said the \$500 represents strictly administrative costs; if there are other regulatory costs associated with changes to rules, then they are listed separately.

Commissioner Divine moved to file this for further discussion; **Chairman Tull** seconded the motion. He suggested that the petitioner look into the question of how long the limit has been \$100; **Mr. Bishop** said it was effective October 19, 1992. **Chairman Tull** said he supports filing to provide an excellent opportunity for new members of the Commission to learn about a component of the overall history of gambling in the state. The vote was taken; **Commissioner Divine and Chairman Tull** voted aye; **Commissioners Heavey and Graham** voted against the motion; motion failed. **Chairman Tull** said that Mr. McCoy will notify the Commission later in the meeting if anything further needs to be done with this matter.

COMMENTS OF PUBLIC OR PUBLIC OFFICIALS

PROBLEM GAMBLING

Gary Hanson, Council on Problem Gambling, thanked the Commission for its support. He said he's been with the Council since mid-March and the Board instructed him to give particular thanks to Chairman Tull for all his support in the past, and also to Frank Miller and Sharon Tolton. He thanked the licensees for giving financial and moral support. He said he knows it is a bold position for licensees to take, and it is a responsible move to deal with the problem of compulsive gambling. It affects a small number of people but is a very big problem for those who are affected. He said they look forward to working with more licensees in the future. He said they offer brochures and hope to see them in more establishments, and there are also signs for posting.

Mr. Hanson said they are not for or against gambling but are neutral on the subject, and this statement is in their mission. They have produced a 30-second public service announcement that has aired on some radio stations in Seattle. He said they offer three free workshops aimed toward health care officials, gambling industry representatives and anyone else who's interested. They are quick, one-day courses for industry representatives to better assess people who may need information on problem gambling resources. He encouraged everyone to attend the courses offered in their areas. The next one will be in Olympia this September.

Mr. Hanson said the eighth national conference on gambling behavior is being held next week in Seattle, and Director Miller is speaking at this conference. He said the organization is also developing a program aimed at problem gambling in adolescents. He said there are between 25-30,000 adolescents who are showing signs of problem gambling, and around 1,000 who are actually considered as problem gamblers. The Counsel has given talks on problem gambling to high school students. At one presentation in Seattle, most of the students who signed up for the program thought it would give them pointers on how to win at gambling. He said they'd also like to increase their presentations before health care associations to get the word out about the issue. They have preliminary plans for a video that focuses on the problem in Washington state. Another goal is the inclusion of benefits for counseling services for problem gamblers in the state health care reform. **Sen. Prentice** asked if they offer continuing education credits for health care professionals who take the courses; **Mr. Hanson** said yes, they do.

Chairman Tull encouraged Gambling Commission members to attend as much of this conference as

possible. He said former-commissioner Ann Noel attended a conference five or six years ago and then discussed with the Commission how to best deal with this issue. The Commission's efforts have evolved and the relationship with the Council has helped.

Ms. Tolton said there will be a rule on next month's agenda to bring the Commission into compliance with a bill that was passed by the Legislature last session requiring the Horse Racing, Gambling and Lottery commissions to get together and determine how the 1-800 number posting would occur within licensed gambling establishments. She said if there are any licensees who would like to give comments regarding that rule, she would like to hear their input.

UNFINISHED BUSINESS

CASINO NIGHTS/Fund Raising Events

Commissioner Graham asked for an update on the request at the last meeting for Lynn Melby to poll members of the Washington State Federation of Clubs as to their opinion on the usefulness of fund raising events.

Mr. Melby, Washington Federation of Clubs, said he is also the executive director of the Washington State Psychologic Association and they do offer continuing education credits, on request, for those attending problem gambling seminars. He said with regard to fund raising events, he polled the club members and found that the success rate on fund raising events has dropped in terms of the net dollars generated for charitable purposes. The success is based on the geographic location of the game and whether they are in an area that competes with another non-profit operations or with a tribal casino. He said they've discussed the possibility of the state deciding to outlaw fund raising event games in order to affect future negotiations with Indian tribes. They are looking at a possible legislative proposal to change the formula; they want to keep fund raising events going. They'd like to remove the limitation on the number of events allowed without changing the ceiling on the number of dollars that can be raised, since most organizations are not able to hit the maximum with just two events. Another change would be on who the workers can be. The pool of people gets smaller and the people remaining are over worked and under trained.

Mr. Melby said his organization raises money with these events through admission fees and food and beverage sales. It is also a social event that members seem to enjoy. A number of clubs have sizable investments in equipment that would become illegal if fund raising events were banned. He said to ban them simply because the frequency of their success is going down a little bit would be of no benefit to the state, unless the reason relates to the effect it would have on future compact negotiations. A complaint he's had from one club is that the workers get tired after a couple hours of dealing cards and begin making mistakes at about 11pm, which is when the events usually start losing money. Some of the gamblers know to arrive late.

Commissioner Graham said they have the right to close the events at any time, and they could close down at 11pm if they want to. **Mr. Melby** said this problem goes back to poorly managed events that could be run better. **Commissioner Graham** said that one of the people who seems quite adept at running casino nights said that if a black jack table is continually losing money, even with changing dealers, then it should be closed down. The players are working the table; not the cards or the dealer. **Mr. Melby** said a person who's been successful over a long period of time at holding these events would know that, but a service club putting on a casino night for the first time is not going to be familiar with how to run a successful event. **Commissioner Graham** said he hopes to have somewhat of a report in September to pass on to the Legislature to try and revive these events. Presently, another organization can come in with another organization and put a fund raising event on jointly; but spouses who are not members cannot participate.

Bud Smith, of the Renton Eagles Club, said his organization has a license to rent its equipment out to other groups in addition to putting on their own casino nights each year. He said they have a maximum of 10 rentals and they do rent it out 10 times. One problem they have with fund raising events is that they have a private

club with a Class H license, which limits them to serving drinks only to members and registered guests. They can't open their fund raising event to the public unless they close the bar. The Liquor Board does allow them to open their bar to the public just once a year. They hold four events per year; two for the club and two for the auxiliary.

COMMERCIAL AMUSEMENT GAMES

RECONSIDERATION OF PREVIOUS MOTION WAC 230-20-685 -- Wager and Prize Limitations

Mr. McCoy said the only requirement regarding the petition that failed is that if it is not filed, a reason must be given in writing. **Commissioner Heavey** said he would like to change his vote on the filing of the petition to raise prize limits on amusement games. **Chairman Tull** said there are no rules prohibiting such motions; **Commissioner Heavey** moved to reconsider the motion; **Commissioner Divine** seconded the motion; motion carried with three aye votes and one nay; **Commissioner Graham** voted nay. **Chairman Tull** said the matter is before the Commission for reconsideration. **Commissioner Heavey** said he has not changed his view on the issue, but he thinks it should be filed so it may be discussed more thoroughly. **Chairman Tull** called for a vote on filing; motion carried with three ayes and one nay by Commissioner Graham.

Chairman Tull thanked the ex officio members for participating in the Commission meetings with greater frequency. He said that Commissioner Mosbarger may possibly be attending the August meeting and if anyone has questions on her status they should check with Susan or Commissioner Graham. He adjourned the meeting.

NOTE: THESE PRINTED MINUTES PLUS THE TAPES CONSTITUTE THE FULL MINUTES.

Susan D. Green
Executive Secretary